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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,930	02/20/2004	Richard Eckhardt	D.1610	7281
3574	7590	09/14/2006		
JOHN E. TOUPAL 116 CONCORD STREET FRAMINGHAM, MA 01701			EXAMINER HENDERSON, MARK T	
			ART UNIT 3722	PAPER NUMBER

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/783,930

Applicant(s)

ECKHARDT, RICHARD

Examiner

Mark T. Henderson

Art Unit

3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 2/20/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/20/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED OFFICE ACTION**

### **Faxing of Responses to Office Actions**

In order to reduce pendency and avoid potential delays, TC 3700 is encouraging FAXing or responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers, which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into TC 3700 will be promptly forwarded to the examiner.

### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities: Claim 1 discloses the limitation "the supporting member" in line 6, which lacks antecedent basis. Is this the "mounting member" as stated in line 2? Appropriate correction is required.
2. Claim 6 is objected to because of the following informalities: It is not understood what is meant by "outer end". Should this be "outer end portion"?

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. In regards to Claim 1, the examiner is confused with distinguishing the “outer end portion” of the pin, and the “outer end portion” of the spring clamp. The applicant may want to state a “first outer end portion” and a “second outer end portion”. Furthermore, wherein claim 1 discloses bores “transversely spaced apart axes”, the applicant has not established which direction is considered transversal and which direction is longitudinal.

4. In regards to Claim 15, it is not understood which direction is considered “inwardly”.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6, 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Higgs (4,675,953).

Higgs discloses in Fig. 2-4, a retainer comprising a pin (10) comprising a shank portion (connected portions of 25 and 26); an outer end portion defining a pair of parallel surfaces penetrated by bores (25a and 26a) with transversely spaced apart axes; an inner portion attachable (portion of 26) attached to support mounting member (11); a spring clamp (12) comprising a pair of unparallel (in the x-axis as shown in Fig. 2) leg portions (21 and 22) having the same length and joined by a yoke portion (20) and inner ends each joined to a journal portion (23 and 24) received by a different one of the bores (25a and 26a); wherein the outer end portion is displaced a substantial distance from the inner end portion (see Fig. 2-4); wherein the leg portions (21 and 22) are substantially parallel and the yoke portion (20) is elongated and projects transversely from the leg portions.

In regards to Claim 1, wherein the pin adapted for attachment to a mounting member for supporting a stack of sheets having one or more openings, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. Therefore, the pin of Higgs is capable of supporting a stack of sheets having openings. Since applicant has not positively claimed a retainer "in combination with a stack of apertured sheets" in detail, the limitations are merely seen as intended use.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 5, 6, and 11-13, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Higgs.

Higgs discloses a retainer comprising all the elements as claimed in Claims 1 and 2, and as set forth above. Higgs further discloses wherein the legs are parallel in the y-axis as shown in Fig. 5. However, Higgs does not disclose wherein the distance between the outer end portion and the inner end is greater than the maximum width of the pin; wherein the bores lie in a obtusely oriented plane; wherein the pin is cylindrical; wherein the leg portions are substantially parallel and the yoke portion is elongated and project transversely from the leg portions.

In regards to Claim 3, it would have been obvious to construct the distance between the outer and the inner end in any desirable length distance, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. Therefore, it would have been obvious to construct the distance length in any desirable size, since applicant has not disclosed the criticality of having a particular size dimension (distance), and invention would function equally as well in any desirable size dimension.

In regards to Claims 5 and 12, it would have been obvious to place the bores at any desired angled location, since it has been held that rearranging parts of an invention involves only routine skill in the art. Therefore, it would have been obvious to place the bores at any desired location since applicant has not disclosed the criticality of having the bore placement at a particular location, and would function equally as well at any location.

In regards to Claim 13, it would have been to make the pin of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. Therefore, it would have been obvious to make the pin of whatever shape or form as desired, since applicant has not disclosed the criticality of having a particular shape, and invention would function equally as well with any shape.

***Allowable Subject Matter***

Claims 7-9, 14-20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

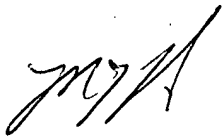
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***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weingartner, Deutsch et al, lake, Manso, Snyder, Glesser, Langwell, Deutsch, Albee, Tarrant, Rand, Poulouin, Yeuh, Smith, Moberg, Swanson, Tischer, Mallet, Stuart, Seaborn, et al, Goluszka et al, and Freedom et al disclose similar retainers.

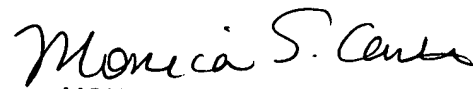
**Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Henderson whose telephone number is (571) 272-4477, and informal fax number is (571) 273-4477. The examiner can be reached on Monday-Friday from 9:00AM to 3:45PM. If attempts to reach the examiner by telephone are unsuccessful, the Examiner Supervisor, Monica Carter, can be reached at (571) 272-4475. The formal fax number for TC 3700 is (571) 273-8300.



MTH

September 11, 2006

  
MONICA CARTER  
SUPERVISORY PATENT EXAMINER